

REMARKS

Claims 1-16, 33-54, and 62-100 are pending in the present application upon entry of the foregoing Preliminary Amendment and are presented for consideration. Claims 1-16, 33-45, 47, 49, 51, 52, and 54 are amended; claims 17-32 and 55-61 are canceled without prejudice or disclaimer; and new claims 62-100 are added. Applicant submits that this Preliminary Amendment does not add new matter. In view of the following Remarks, allowance of the pending claims is respectfully requested.

EXAMINER INTERVIEW

Applicant thanks Examiner George Walton for granting Applicant's representative the courtesy of a personal Examiner Interview on September 16, 2003. During the Examiner Interview, Applicant discussed the pending independent claims in view of various references cited in an accompanying Supplemental Information Disclosure Statement (IDS). This particular IDS includes pleadings and references relied upon by an adverse party for its invalidity defense in an on-going litigation of U.S. Patent No. 6,308,728 and U.S. Patent No. 6,395,417, which are related to the pending application. (See e.g., References **14** and **15**.) The litigation is entitled ***Ramsey Group Inc. v. EGS Int'l, Inc. et al.***, No. 1:02CV77, (W.D.N.C. filed March 26, 2002).

During the Examiner Interview, Applicant argued that the references from Acran, Yuasa-Exide, Calicorp, and Enviroguard (References **3-10** and **16-28** in the accompanying IDS) do not disclose a flexible liner. The Examiner agreed. Applicant further notes that, in addition to being cumulative of one another, these references are also merely cumulative of prior art acknowledged and discussed in the background section of the pending application. In particular, the background refers to Article 64 of the Uniform Fire Code as requiring "a four-inch high containment barrier with an acid neutralization capability to a pH of 7-9" to contain spills from batteries.

Applicant argued that the references from Minnesota and Wisconsin regarding the storage of spent lead acid batteries (References **12**, **13**, and **29-31** in the

accompanying IDS) are non-analogous art as they were directed toward used batteries. The Examiner agreed.

Applicant argued that the references outside of the field of battery spill containment (References C-Q in the accompanying IDS) are not material because they comprise non-analogous art. The Examiner agreed.

Applicant argued that the reference from Independent Power and Light "IP&L" (Reference 11 in the accompanying IDS) does not pertain to industrial battery spill containment systems. As such, this reference is not directed toward the same field of endeavor or particular problems addressed by Applicant's invention. The Examiner agreed. However, the Examiner indicated that this reference does disclose a flexible liner of sorts, albeit different from that disclosed in Applicant's specification. Applicant further argued that, among other things, IP&L does not disclose, teach or suggest a formed flexible liner with a base and an edge and that the sprinkling of baking soda discussed by IP&L does not satisfy or render obvious the use of a material to absorb and chemically neutralize a spilled substance.

Solely to expedite allowance of the pending application, Applicant proposed some clarifications to the claims during the Examiner Interview that the Examiner agreed would distinguish over all of the references referred to above.


Applicant has amended independent claims 1, 33, and 44 in accordance with the proposed clarifications discussed during the Examiner Interview. Applicant expressly reserves the right to pursue any or all of the claims pending prior to this amendment. New claims 62-100 are added, of which claim 74 is an independent claim. Claim 74 includes features similar to those of claims 1, 33, and 44. New dependent claims 62-73 depend from and add additional features to claim 33; and new dependent claims 75-100 depend from and add additional features to claim 74. Accordingly, Applicant respectfully requests that the Examiner enter this Preliminary Amendment and allow the pending claims.

CONCLUSION

Applicant believes that the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Dated: September 22, 2003

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Rick A. Toering', is written over a horizontal line.

Rick A. Toering
Registration No.: 43,195
MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND
POPEO P.C.
12010 Sunset Hills Road, Suite 900
Reston, Virginia 20190
703-464-4806

RES 101538v1